

**FLATHEAD COUNTY PLANNING BOARD  
MINUTES OF THE MEETING  
OCTOBER 8, 2008**

**CALL TO ORDER** A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Marie Hickey-AuClaire, Gordon Cross, Gene Dziza, Rita Hall, Randy Toavs, and Jim Heim. Frank DeKort, Marc Pitman, Mike Mower were absent. BJ Grieve represented the Flathead County Planning & Zoning Office.

There was 1 person in the audience.

**APPROVAL OF MINUTES** Toavs made a motion seconded by Heim to approve the August 27, 2008 meeting minutes.

The motion was carried by quorum.

**PUBLIC COMMENT**  
*(not related to agenda items)*

None.

**R-2.5 ZONING CREATION (FZTA 08-03)**

A request by the Flathead County Planning and Zoning Office to amend the Flathead County Zoning Regulations to add an "R-2.5 Rural Residential" zoning district. This zoning district is proposed to be added as Section 3.43 of the Flathead County Zoning Regulations. The district will have a 2.5-acre minimum lot size and is intended for rural, primarily residential areas where larger, estate-type lot sizes are appropriate and agricultural/silvicultural/horticultural operations are a decreasingly viable land use.

**STAFF REPORT** BJ Grieve reviewed Staff Report FZTA 08-03 for the Board.

**BOARD QUESTIONS**

Toavs didn't understand why someone would want to go from an unzoned area to a zoned area.

Grieve said they wouldn't. He talked about different zoning designations and creating zoning districts.

Hall asked about a letter submitted by Gary Hall that talked about additional uses. She wanted to know his intention.

Grieve wasn't sure but he emailed him a response regarding the R 2.5 zoning and what it entails. He said staff discussed changing things in this new zone but didn't feel it was an appropriate time to bring forth a new zone with a bunch of new stuff. They wanted this zoning district to maintain flow. There are some things that need to change but it needs to be throughout the zoning designations, not just one.

Toavs asked if Gary Hall had a copy of the staff report before he sent this letter; it sounds like he didn't.

Grieve wasn't sure but said the uses are pretty clear. He just wanted to pass the letter along to the board.

Heim asked if Whitefish has 2.5 acre zoning.

Grieve said they do.

Heim asked if it is similar to this.

Grieve said their version is called WC-R and briefly discussed it.

Hall asked what's in the Whitefish 2.5 zoning that's not in this proposed zoning. She asked if Grieve encompassed everything from that zoning.

Grieve said he did not use Whitefish zoning at all. He wrote the proposed zoning from scratch while referencing county R-1 zoning and SAG-5 zoning. He tried to blend them and come up with a definition that would prevent abuse. He gave some additional background as to why this amendment is coming before the board. He said county zoning is a more permissive than Whitefish zoning.

**PUBLIC  
COMMENT**

Brian Westphal, 201 Mountain Ash Lane, wanted to address a couple things in regard to the proposed zoning. He suggested adding wording to allow for a "mother-in-law" use or a small rental. He said those uses would be less invasive than a bed and breakfast, which would be an allowed use. He talked about the fencing requirement and doesn't think a city fence height requirement should be applied to rural properties. He doesn't think a 4-foot height restriction would be necessary. He talked about the area around him and gave the board some insight as to what's currently there.

Heim said it shows a guest house as a permitted use.

Westphal told the board he is looking to put a rental house on his property, not do a subdivision or PUD.

Heim asked if a second house would be prohibited from being rented.

Grieve said guesthouses cannot be rented. He said he would provide some clarification after Mr. Westphal was done speaking.

Westphal said there's a lot of contention going on because of what Whitefish has done. He thinks this zoning is a step in the right direction.

**APPLICANT/  
STAFF  
REBUTTAL**

Grieve talked about accessory apartments. He talked about rural areas without building departments and the problems that could arise by people converting space into living quarters without having to get a certificate of occupancy.

Toavs asked about DEQ approval in regard to accessory apartments.

Grieve seems to think DEQ sees this problem all the time where people try and add an accessory apartment when they are only approved for a single-family dwelling.

Toavs said plumbing and electrical is inspected by the state unless someone does a “midnight” job.

Grieve said that is correct. He said once people have their primary structure permitted, people just start thinking about revenue in regard to adding an apartment. He talked about fence height in residential zones and why he suggested a 4-foot front fence height.

Hall wondered why they couldn’t add something about fencing so that they could have 4-ft of solid fence and something transparent at the top to make it a 6-ft fence.

Grieve said something like that would be hard to write into the regulations because if they stated there could only be 4-ft of visual impairment, someone could come in and put several more feet of chain link or something on the top because you can see through it. He said the board can write this as they need to.

Hall commented on guest houses. She knows instances where they have been rented out.

Grieve said people don’t usually build a guest house and do a shoddy job as opposed to just finding a space that can be converted to an accessory apartment.

Hall said if Westphal has 5.5 acres and it changes to R 2.5 zoning, he could have 2 residences.

Cross said if he had 2 lots.

Westphal said if he created a second lot.

He asked the board to refrain from creating a countywide zone based on the needs of one resident. He wants them to consider whether or not things certain uses fit as a general application.

Hall said she just used him as an example.

Grieve talked about home occupations as a permitted use in the proposed R 2.5 zoning.

Westphal wanted to add a thought. He said people do what they want to do anyway and said if the county makes a way for people to do it legitimately it encourages people to work with the system rather than “ducking” it.

Toavs asked why a bed and breakfast is considered a conditional use rather than a permitted use.

Grieve said they would need permits as well as licensure from the state.

Toavs wondered if they were to add accessory apartments to the list of conditional uses that would be a way to track it.

Grieve said the board could include accessory apartments if they see fit. He said the concept of a bed and breakfast is different than an accessory apartment. He said there is a more significant economic investment in the use and therefore a lower likelihood of corners being cut. He talked a little bit about administrative conditional use permits and standard conditional use permits and their process. He mentioned the possibility of a workshop to accommodate accessory apartments in a variety of zones that could be done by means of another text amendment.

Toavs asked if they are currently allowed in R-1 zones.

Grieve said no; they are only allowed in B-zones and I-zones.

Westphal asked Grieve if he had more of an issue with “mother-in-law” apartments vs. a rental house.

Grieve said Flathead County does not accommodate for 2 single-family residential dwellings on a piece of property.

Hall wondered if it would work if the dwellings were attached.

Grieve said it’s not an attachment issue. He said zoning typically promotes one primary use per tract of record. He said accommodating accessory uses such as guest houses or accessory apartments is a little trickier.

Hall asked if accessory apartments need to be defined.

Grieve said it is already defined in the regulations and read the definition. He said the board could look at addressing the accessory apartment issue countywide. He said staff has actually talked about

this quite a bit because it's a notion that you could accommodate affordable housing and infill.

**MAIN MOTION  
TO ADOPT F.O.F.**

Toavs made a motion seconded by Hickey-AuClaire to adopt staff report FZTA 08-03 as findings-of-fact.

**BOARD  
DISCUSSION**

Cross asked Grieve about procedure and when they board should consider minor changes to the text.

Grieve said they just need to make sure if they adopt the findings as presented, that the changes to text would not alter the meanings of the facts.

**MOTION  
ADD F.O.F. #12**

Toavs made a motion seconded by Heim to add a finding to state: *During the public hearing, the need for accessory apartments in some residential zoning districts was discussed.*

**ROLL CALL  
ADD F.O.F. #12**

On a roll call vote the motion passed unanimously.

**ROLL CALL TO  
ADOPT F.O.F.**

On a roll call vote the motion passed unanimously.

**MOTION TO  
RECOMMEND  
APPROVAL**

Hickey-AuClaire made a motion seconded by Hall to adopt Staff Report FZTA 08-03 and recommend approval to the Board of County Commissioners.

**BOARD  
DISCUSSION**

The board talked about fencing at length.

**SUBSIDIARY  
MOTION TO  
AMEND SECTION  
3.43.040(6)**

Hickey-AuClaire made a motion seconded by Hall to amend Section 3.43.040(6) of the proposed text amendment as follows (additions are shown italicized, deletions are shown stricken):

6. Maximum Fence Height (*Residential Uses*):

|        |        |
|--------|--------|
| Front: | 4 feet |
| Side:  | 6 feet |
| Rear:  | 6 feet |

**BOARD  
DISCUSSION**

Hall asked if it's easier to add things as new zoning designations are first presented or to wait and do workshops on them.

Cross said the planning office is looking into doing a rewrite of the zoning regulations. He said at the same time, an issue like this could be addressed. Accessory apartments could be added to the zoning regulations and could perhaps help the affordable housing issue as well.

Grieve said it would also give staff some time to research accessory apartments and see what other communities have done.

**ROLL CALL TO  
AMEND SECTION  
3.43.040(6)**

On a roll call vote the motion passed unanimously.

**BOARD  
DISCUSSION**

Cross expressed concern about a definition on page 10. He read the wording to the board.

Grieve explained the thought-process behind the definition.

**MOTION TO  
AMEND SECTION  
3.43.010**

Cross made a subsidiary motion and was seconded by Hall to amend Section 3.43.010 of the proposed text amendment as follows (additions are shown italicized, deletions are shown stricken):

Definition.

A district intended for rural, primarily residential areas where larger, estate-type lot sizes are appropriate and agricultural/silvicultural/horticultural operations are a decreasingly viable land use. The use of this district is appropriate in transition areas adjacent to and between higher-density Residential (R) and lower-density Suburban Agriculture (SAG) zones. This district is not appropriate in areas primarily surrounded by lower-density SAG and AG zones ~~and/or areas adjacent to significant ongoing agricultural/silvicultural/horticultural and/or extractive industry operations~~. It is intended that no uses be permitted in this district that will tend to devalue property for residential purposes or interfere with the health, safety, order or general welfare of persons residing therein.

**BOARD  
DISCUSSION**

Heim used Bigfork Water & Sewer as an example and said you wouldn't want homes right next to one of their sludge disposal field.

Cross thinks there is a lot of guidance regarding advisability of zoning designations and talked about buffers.

Grieve talked about some of the zones.

Cross wondered how "hodge-podge" should be dealt with so you don't end up with certain uses next to each other.

Hall suggested changing part of the wording in the definition from "This district is not appropriate..." to "This district *may not be* appropriate..."

Cross asked if there is similar language in other designations that talks about appropriateness of the district.

Grieve said there really isn't but he included it because staff has a hard time getting people to understand that zoning is an implementation for growth-guidance purposes; it's not an accommodation for what they're currently doing. He said if you use the word *may* people could argue it. He wanted to clearly define what the zone is and what it is not so people understand it better.

Cross said that would be breaking the rule of staying consistent with the language in the zoning because this one has language on appropriateness whereas the others do not.

Grieve read the SAG-5 and R-1 descriptions for comparison.

Toavs likes the wording as is. He talked about zone changes and said they should be more difficult. He said if you're going to go to the trouble of zoning an area you should have something worth saying.

Hall agreed and said the wording should stand as is.

Toavs didn't agree with striking the rest of the sentence. He said it's a unique zone. He talked about the predictability map and county-wide zoning.

Grieve said he chose the language carefully to provide for buffers and transition areas.

Cross talked about gravel pits in agricultural areas. He said he would rather see R-2.5 zoning next to a gravel pit rather than R-1.

Grieve said he would rather see SAG-5 or SAG-10 next to a gravel pit. You don't want to infill around a gravel pit, if you buy a 10-acre piece of property, leave it what it is don't request something smaller. If a gravel pit already exists, don't put more people next to it; look for another place to put people.

The board and staff continued to discuss wording and zoning designations.

**ROLL CALL TO  
AMEND SECTION  
3.43.010**

On a roll call vote the motion failed 2-3 with Hickey-AuClaire, Toavs, and Heim dissenting.

**BOARD  
DISCUSSION**

Hall asked if they wanted to "word-smith" things any further.

Cross thinks all the issues were discussed during public comment.

Grieve said staff would love to deal with the issue of infill.

Cross said the only other thing to discuss would be Gary Hall's email. He said it doesn't make sense to add more commercial uses. The commercial uses already listed are consistent with uses in SAG-zones and R-1 and he doesn't think it's appropriate to introduce more commercial uses to residential zones. He said Westphal testified that there would be more uses allowed under county zoning than the Whitefish zoning it is now.

Hall said Grieve did a nice job writing the report.

**ROLL CALL TO  
RECOMMEND  
APPROVAL**

On a roll call vote the motion passed unanimously.

**OLD BUSINESS**

Cross asked what's going on with the "donut" area.

Grieve enlightened the board on what staff is working on and all the things to come with regaining the area around Whitefish.

Toavs updated the board on what their committee was working on and the board discussed it further.

The board talked about whose board positions are up this year.

The board and staff discussed current issues, future planning issues/ideas.

**NEW BUSINESS**

Grieve said Jeff will be updating the Commissioners on the subdivision regulations on October 14<sup>th</sup> from 11-12 noon.

**ADJOURNMENT**

The meeting was adjourned at approximately 8:10 p.m. on a motion by Toavs seconded by Heim. The next meeting will be held at 6:00 p.m. on November 12, 2008.

---

Gordon Cross, President

---

Jill Goodnough, Recording Secretary

*APPROVED AS SUBMITTED/CORRECTED: 12/3/08*